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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

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No. 75-238

LEROY CALLAHAN,
Petitioner,

v.

SUPERINTENDENT OF EDUCATION OF LEAKE COUNTY, MISSISSIPPI, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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Petitioner Callahan files this reply to respondents' brief in opposition for the purpose of showing that respondents' brief (1) fails to respond to or even mention the conclusion of the Court of Appeals on rehearing that the community opposition to Callahan was based in part on race, (2) mistakenly characterizes the district court's conclusory findings, and (3) concentrates on tangential matters of school board procedure which have no bearing upon the worthiness of this case for certiorari.

1. Respondents' brief in opposition makes no reference to the existence or contents of the Court of Appeals' opinion on rehearing. While respondents cite often to the Court of Appeals' first opinion, which respondents and the Court conceded was based on a misapprehension of the facts (App. B, p. 11a), respondents ignore the Court of Appeals' critical conclusion, based on reconsideration of the facts, that "in the correct view of the facts, the unpopularity [of Callahan] because of the run-in with the football coach and other teachers was exacerbated by his activities in relation to the black students" (App. B, p. 13a). The Court below could not conclude otherwise in light of the facts reviewed and recited on reconsideration (App. B, pp. 11a-12a).

2. Respondents' brief also perpetuates and enlarges upon the Court of Appeals' erroneous reading of the District Court's findings. Respondents state that the District Court, *inter alia*, "determined that the action of the Respondent Price in deciding not to recommend petitioner for reemployment was based upon considerations and opposition totally unrelated to any efforts of the petitioner to comply with court-ordered desegregation" (Br. in Opp. 18).

The District Court, however, did not so find. The Court said that the "decision not to re-employ the plaintiff as principal . . . was not based on any constitutionally impermissible ground but solely upon the determination by the Superintendent . . . that there was in fact substantial opposition among the parents of students . . . to the re-employment of the plaintiff . . . and that because of this substantial opposition, his re-employment . . . would not be in the best interest of public schools . . ." (App. D, p. 17a). The District Court's statement does not contain a finding that the "substantial opposition" to Callahan was free of racial hostility. Certainly the statement does not find or suggest that the

Superintendent was able to or in fact did separate the racially hostile opposition from the racially neutral opposition and base his decision solely upon the latter grounds. As we read the District Court's statement, the Court found only that the Superintendent's decision to terminate Callahan was not inspired by any racial motives of the Superintendent but was based solely on the "substantial" community opposition to Callahan. Since the District Court made no specific finding on the extent to which that community opposition was motivated by race, that Court manifestly concluded that substantial community opposition, irrespective of its racial content, was a constitutionally permissible basis for terminating petitioner.

The Court of Appeals appears to have read the District Court's decision—as do respondents now—as finding as a matter of fact that the Superintendent based his decision only on that part of the community opposition that was not racially motivated (App. B, p. 12a). As indicated, this construction of the District Court decision is erroneous. Further, the Court of Appeals did not, and on the basis of the record could not, independently find that the Superintendent relied only on racially neutral opposition. Thus, the question set forth in the petition is squarely presented.

3. Respondents also claim that the question presented in Callahan's petition is factually erroneous in two other respects. First, they claim that petitioner Callahan was not terminated by the "Board" but rather by the "Superintendent" (Br. in Opp. 11-12). Respondents state that pursuant to Mississippi law the Board, in the absence of an affirmative recommendation from the Superintendent, was powerless to take any action respecting Callahan's employment (*id.* at 12). Respondents' argument overlooks the fact that the District Court ordered the Board to hear and determine Callahan's claims that he was being terminated on the basis of racially hostile

community opposition to him. The Board held such a hearing and affirmed the Superintendent's action. Thus, in our view, the Board terminated petitioner. This facet of the case, however, is immaterial since respondents' claim, if correct, does no more than focus the legal issue presented on whether Superintendent Price, a respondent herein, was barred by the Constitution from terminating petitioner solely on the basis of community opposition based in part on race.

Second, respondents claim that the Superintendent did not "discharge" Callahan but rather decided not to renew his contract. Whether one labels the termination a "discharge" or a "decision not to renew," the essential question remains—may a state official make such an employment decision solely on the basis of community opposition that is in part racially motivated?[1] The question is squarely presented by the record for the Superintendent testified that Callahan is "very capable and qualified to run a school" (Tr. 25) and that in the absence of community opposition "I would have recommended him I am sure, just like I had the first year I was in office" (Tr. 17).

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[1] It is well established that the Equal Protection Clause bars public officials from refusing to hire applicants on account of race just as it bars public officials from firing employees on account of race. *E.g.*, *Wall* v. *Stanly County Board of Education*, 378 F.2d 275, 277 (4th Cir. 1967); *Rolfe* v. *County Board of Education*, 391 F.2d 77, 79 (6th Cir. 1968); *Castro* v. *Beecher*, 459 F.2d 725, 733 (1st Cir. 1972). Cf. *Perry* v. *Sindermann*, 408 U.S. 593, 596 (1972) (lack of contractual right to re-employment does not defeat claim that nonrenewal of contract violated First Amendment).

Respectfully submitted,

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